IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No: 372 of 2001

Date of decision: 17.8.2007

Bhushan Kumar **Petitioner**

Versus

Bimla Devi and others **Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Mr. Bimal Gupta, Advocate

For the Respondents: Mr. B.K.Malhotra Advocate

Deepak Gupta, J. (Oral)

The facts of the present case clearly reveal the lethargic pace at which legal proceedings are carried on in our existing legal system.

The respondents herein filed an application under Section 8 of the Arbitration Act for appointment of an Arbitrator on 7.5.1976. The case set up by them was that the parties to the lis had agreed to carry on partnership business in the name and style of M/s Nand Lal and Company vide agreement dated 2.7.1974. The agreement provided that in case of disputes arising between the parties, the same were to be referred for

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

adjudication to an Arbitrator. The respondents contended that the petitioner herein had misconducted himself as a partner and they were entitled to recover certain amounts from him and prayed that Arbitrator be appointed. This application was rejected by the Senior Sub Judge, Mandi on 27.10.1983 i.e. after 7 years.

Revision Petition No. 42 of 1984 was filed before this court by the respondents challenging the order rejecting their application for appointment of Arbitrator. It took 6 years for this revision petition to be decided and this court vide its order dated December 1, 1989 directed the trial court to appoint an Arbitrator. The matter thereafter went back to the trial court who appointed Mr. Vishva Nath Sharma, Advocate, as the sole Arbitrator to resolve the disputes between the parties. The parties filed their claim and counter claim before the Arbitrator. Evidence was led and the Arbitrator finally disposed of the arbitration proceedings on 23.10.1992. The petitioner herein thereafter filed objections to the award of the Arbitrator on 20.11.1992 which objections were rejected by the Senior Sub Judge, Mandi on 8.9.1995. The petitioner thereafter filed an appeal before the learned District Judge, Mandi which was transferred to the court

of learned Additional District Judge, Mandi and it took 5 years for this appeal to be decided and the same was decided on 20.8.2001. Not satisfied, the petitioner then filed revision petition No. 372 of 2001 which has come up for hearing today more than 30 years after the petitioner had first approached the trial court for appointment of an Arbitrator. This does not speak to well of our legal system and the people shall loose their confidence in the courts in case proceedings are allowed to continue at a snail's pace, as in the present case.

The dispute in this case is also very short. The Arbitrator has passed an award of Rs. 17,797.87 paise in favour of respondent No. 1 and Rs. 17,500.41 paise in favour of respondents No. 2 to 5. He has come to the conclusion that the total assets including the good will of the business of the partnership firm was Rs. 1,35,868.67 paise and the share of the present petitioner in the said assets was Rs. 63,820.38 paise, of respondent No. 1 Rs. 36,172.87 and of respondents No. 2 to 5 jointly Rs.35,875.41 paise. He has accepted the plea of the petitioner that the liabilities of the firm have to be also borne by all. He has, however, only accepted three of the liabilities to have been proved on record which amounts

to Rs.73,500/-. He has held that the petitioner has failed to prove the other liabilities. After making adjustments for the liabilities, the award in the aforesaid terms has been passed.

The main challenge to the award before the trial court was that the Arbitrator has ignored the order of reference resulting in the entire proceedings being mis-conducted and that the Arbitrator has neither discussed nor gone into the documents, as alleged.

I have gone through the award. The Arbitrator was not required to give a speaking award nor was he required to give a detailed award. However, from the award it is clear that the Arbitrator has referred to and has taken into consideration the entire evidence and on the basis of the evidence has passed the award in question. The award is based on facts. The petitioner has miserably failed to show how the Arbitrator has mis-conducted the proceedings which was the only ground on which the award could have been set aside. Both the courts below have held that the award is not required to be set aside and the objections have been rejected. In revisional proceedings this court can only go into the question of legality and proprietary of the proceedings and not into

merits of the case. There is no jurisdictional or legal error in the findings of the courts below. The award of the Arbitrator is legal and valid and has rightly been upheld by both the courts below. The revision petition is, therefore, dismissed with costs assessed at Rs. 5,000/-.

August 17, 2007(K) (Deepak Gupta), J.